

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JACQUELYN CAMPBELL CHESSON,	§	
<i>et al.</i> ,	§	
	§	
v.	§	CIVIL ACTION NO. H-01-315
	§	
TJR PARTNERSHIP LTD, <i>et al.</i>	§	

MEMORANDUM AND ORDER

In 2001, approximately 315 individual plaintiffs sued defendants Darrel Hall and entities he controlled. Plaintiffs, purchasers of houses built and sold by defendants in a subdivision developed by defendants, alleged that the houses and the subdivision had many defects and problems. Defendants have now filed a third motion to dismiss certain plaintiffs from this suit. This court grants the motion in part. Specifically, this court orders as follows:

1. Those individuals who were named in the March 2003 Second Amended Complaint and the December 2004 “active plaintiffs list” and who attended the November 2005 hearing, the February 2006 hearing, or provided a letter of intent to proceed in this case, are proper plaintiffs.
2. Individuals who were not named in the March 2003 Second Amended Complaint or the December 2004 active plaintiff list, but who attended the November 2005 hearing, the February 2006 hearing, or provided a letter of intent to proceed with this case, may be parties, but only if they make a specific showing that they timely notified defendants of their claims. No later than

April 21, 2006, these individuals must file with the court and provide counsel for defendants written proof showing when and how they previously notified defendants of their specific claims about the condition of their houses and the subdivision.

3. Individuals who were named in the March 2003 Second Amended Complaint and the December 2004 active plaintiff list but have not appeared at the November 2005 hearing, the February 2006 hearing, or notified the court of an intent to proceed, are dismissed from this case.

This order also addresses the status of those individuals who do not fall in one of the three categories identified above. Once the identity of the remaining plaintiffs is settled, mediation will be ordered as to the plaintiffs and the defendants. The reasons for these rulings, and who is included in each category, is explained below.

I. Background

This case was filed in state court and removed to federal court in 2001. The individual plaintiffs alleged that they acquired houses from the defendants built from approximately 1996 through 1999 that were incompletely or poorly constructed, had water and septic systems that functioned poorly, and were in subdivisions with drainage problems and unpaved roads. On March 3, 2003, counsel for plaintiffs, Damon R. Capps, filed a Second Amended Complaint adding a number of plaintiffs to the case. No later amended complaint has been

filed. A copy of the March 3, 2003 Second Amended Complaint is attached to this Memorandum and Order as Attachment 1.

On December 15, 2004, in response to a directive from this court, counsel for plaintiffs sent counsel for defendants a list of those plaintiffs who intended to continue with the case, defined as those listed on the Second Amended Complaint who had not affirmatively indicated that they wanted to drop out from the litigation. With few exceptions, this “active plaintiff list” did not add names to those listed on the March 2003 amended complaint. Instead, the December 2004 active plaintiff list deleted some names from the March 2003 Second Amended Complaint. A copy of that December 2004 active plaintiff list is attached as Attachment 2.

On August 26, 2005, the State Bar of Texas notified the Federal District Court for the Southern District of Texas that counsel for plaintiffs, Damon R. Capps, had been disbarred. This court received the notification on September 6, 2005. Shortly before receiving the disbarment notice, this court issued a lengthy opinion granting in part and denying in part motions to dismiss and for summary judgment that defendants had filed after discovery. Counsel for plaintiffs had filed extensive briefs responding to those motions. After receiving the disbarment notice, this court took careful steps to ensure that the individual plaintiffs received a copy of the court’s opinion and of notices setting deadlines for the plaintiffs to obtain new counsel or state an intent to proceed *pro se*.

This court issued an order setting a hearing for November 1, 2005 to address the overall case status. The order setting the hearing was sent to all the plaintiffs named on the March 2003 amended complaint. The order instructed that all the individual plaintiffs had to attend, “either personally or through an attorney you have selected to represent you and who has filed an appearance on your behalf in this case.” This court warned that “[f]ailure to attend the hearing, either personally or through an attorney, may lead to a dismissal of your claims.” A copy of that Order is attached as Attachment 3. (Docket Entry No. 98). In October 2005, the defendants filed a motion to dismiss those plaintiffs who were named on the Second Amended Complaint filed in March 2003 but not included on the December 2004 active plaintiff list.

At the November 1, 2005 hearing, this court recorded those attending by a sign-in sheet. After that hearing, this court granted additional time for plaintiffs to locate new counsel, issuing an order stating that new counsel had to file an appearance no later than January 6, 2005. The order stated that “[a]ny plaintiff who does not obtain new counsel by January 6, 2005, but who wishes to continue to proceed in this case, must file a written submission with this court no later than January 6, 2005, stating an intent to proceed *pro se*. Any plaintiff who fails either to file such a written statement or appear through counsel by January 6, 2005 may have their claims dismissed.” The order also set a hearing for January 20, 2006. The order stated: “Each plaintiff must appear either in person or through the counsel who filed an appearance by January 6, 2006. Failure to do so may lead to dismissal.” This order was sent to all those listed on the March 2003 Second Amended Complaint, as well

as to the individuals who had attended the November 2005 hearing. A copy of that Order is attached as Attachment 4. (Docket Entry No. 104).

At the request of a lawyer then considering whether to appear as counsel for some of the plaintiffs, this court issued an order on January 5, 2006 extending the time for counsel to appear or for plaintiffs to notify this court that they intended to proceed *pro se*. The hearing was reset to February 17, 2006. This court again sent the order to all plaintiffs listed on the March 2003 Second Amended Complaint as well as to individuals who had appeared at the November 2005 hearing. (Docket Entry No. 113). A copy of that Order is attached as Attachment 5.

At the February 17, 2006 hearing, this court used a sign-up sheet and asked those in the courtroom to identify themselves on the record. A number of plaintiffs named in the March 2003 Second Amended Complaint—whose names also appeared on the December 2004 active plaintiffs list—were not present. Some people attending the hearing told this court that some of the individual plaintiffs were unable to attend. This court instructed that those individuals had to inform the court in writing by a specific date that they intended to pursue the litigation. Several letters were received by the deadline.

The defendants now move to dismiss the claims of those individuals whose names did not appear on the March 2003 Second Amended Complaint and active plaintiffs list, as well as those whose names appear but who failed to appear at the November 2005 or February 2006 hearings or send a letter making clear their intent to proceed with this case. (Docket Entry No. 136).

II. The Motion to Dismiss

A. The Previously-Dismissed Plaintiffs

Several individuals included in the March 2003 Second Amended Complaint have settled and had their claims dismissed or have been dismissed for other reasons. These individuals are no longer in this lawsuit. The plaintiffs already dismissed are listed in the following table.

Name	Date Dismissed
Tory Barksdale	3/1/06
Roger and Deborah Fountain	1/17/06
George and Linda Glover	11/14/05
Ron and Laurie LeBlanc	8/25/05
James and Cossette McKinney	2/21/06
Donna Tulley	3/6/06

B. The Status of Other Individuals

1. General

The following table lists those named in the March 2003 Second Amended Complaint. As to this group, this table also identifies who was included on the December 2004 active plaintiffs list; who attended the November 2005 hearing, who attended the February 2006 hearing, and who provided a letter stating their intent to proceed.

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
1	Darrell Abshire	YES	NO	NO	NO	NO
2	Kristen Abshire	YES	NO	NO	NO	NO
3	David Ackman	YES	NO	NO	NO	NO
4	Joseph and Anita Allooh	YES	YES	YES	YES	NO
5	Waldo Avalos	YES	YES	NO	NO	NO
6	Alvin Babcock	YES	YES	NO	NO	NO
7	Lisa Babcock	YES	YES	NO	NO	NO
8	Theresa Bankert	YES	YES	NO	NO	NO
9	Jose and Salena Barrios	YES	YES	NO	NO	NO
10	Robert and Filberta Barron	YES	NO	YES	YES	NO
11	Sam and Regina Bartley	YES	YES	NO	NO	NO
12	Steven Baxter and Regina Fannell	YES	YES	YES	YES	NO
13	Sheldon and Cherrie easley	YES	YES	NO	NO	NO
14	Sheldon and Shirley Bennett	YES	YES	NO	YES	YES 2/21/06
15	Joel Bergkvist and Theresa Bergkvist	YES	YES	YES	YES	YES 1/5/06
16	Shawn and Gidget Bernard	YES	YES	YES	YES	NO
17	Arthur and Eva Bibbs	YES	YES	NO	NO	NO
18	Rick Bishop and Claudette Ferraro	YES	YES	YES	YES	YES 11/1/06
19	Judy Blair	YES	YES	NO	NO	NO
20	Charles and Janet Bliss	YES	YES	NO	NO	NO
21	Kevin and Billie Bobbit	YES	YES	YES	YES	YES 2/14/06
22	Dicky and Sonya Borden	YES	YES	NO	NO	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
23	William and Priscilla Braddock	YES	YES	YES	YES	NO
24	Richard Brandt and Kevin Brandt	YES	YES	NO	NO	NO
25	Tommy Breedlove	YES	YES	YES	YES	YES 2/10/06
26	Donald and Patricia Briggs	YES	YES	NO	NO	NO
27	Hazel Briles	YES	YES	NO	NO	NO
28	Gloria Briock	YES	NO	NO	NO	NO
29	Mike Briock	YES	NO	NO	NO	NO
30	Cameron Brown and Linda Winters	YES	YES	NO	NO	NO
31	Geraldine Brown	YES	YES	NO	NO	NO
32	James and Jacqueline Burnett	YES	YES	NO	NO	NO
33	Ronnie and Stephanie Burrows	YES	YES	NO	NO	NO
34	Bobbie and Rosita Campbell	YES	YES	YES	YES	NO
35	Jake and Cherry Carlock	YES	YES	NO	NO	NO
36	Tanja Carmichael	YES	YES	NO	NO	NO
37	Ron and Rhonda Carson	YES	YES	NO	NO	NO
38	Dorothy Carville	YES	NO	NO	NO	NO
39	Jacquelyn Chesson	YES	YES	YES	YES	NO
40	Leo and Ernestine Childress	YES	YES	NO	NO	NO
41	Kenneth D. Clark	YES	YES	NO	NO	NO
42	Wesley and Michelle Collins	YES	YES	NO	NO	NO
43	Mathew and Jill Copeland	YES	YES	NO	NO	NO
44	Eddie and Brandy Cox	YES	YES	NO	NO	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
45	Jesse and Michelle Crain	YES	YES	NO	NO	NO
46	Danny and Heidi Cromeens	YES	YES	NO	NO	NO
47	James and Roberta Cuplin	YES	YES	NO	NO	NO
48	Michael and Beth Davidson	YES	YES	YES	NO	NO
49	Loren Dennard and Thelma Metzger	YES	YES	NO	NO	NO
50	Clarence and Katrina DeSha	YES	YES	YES	NO	NO
51	Harold and Sandra Dodson	YES	YES	YES	YES	NO
52	John and Regina Doty	YES	YES	YES w/counsel	YES w/counsel	YES 12/3/06
53	Richard and Betty Doyle	YES	YES	NO	NO	NO
54	Everett and Sandra Eaton	YES	YES	YES	YES	YES 2/10/06
55	Regina Fanelli	YES	NO	NO	NO	NO
56	James Farnkoff and Patricia Jeffcoat	YES	YES	YES	YES	NO
57	Chad and Judina Faulkner	YES	YES	NO	NO	NO
58	Greg and Sara Faulkner	YES	YES	NO	NO	NO
59	David and Theresa Ferguson	YES	YES	NO	NO	NO
60	Ron and Elizabeth Ferguson	YES	YES	NO	NO	NO
61	Ronald and Tonya Fitch	YES	YES	NO	NO	NO
62	Markel Fox	YES	NO	NO	NO	NO
63	Jerry Freeman	YES	NO	NO	NO	NO
64	Monica Freeman	YES	NO	NO	NO	NO
65	Scott and Janice Freile	YES	YES	NO	NO	NO
66	Jackie Gatlin	YES	YES	YES	YES	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
67	George and Diane Globus	YES	NO	NO	NO	NO
68	Patrick and Katherine Globus	YES	YES	NO	NO	NO
69	Belinda Gorby	YES	NO	NO	NO	NO
70	William Gorby	YES	YES	NO	NO	NO
71	Jesse Grandos	YES	YES	NO	NO	NO
72	Darren and Tamara Griffis	YES	YES	NO	NO	NO
73	Dewey and Vanesa Guillory	YES	YES	YES	YES	NO
74	Douglas and Hilda Hagler	YES	YES	NO	NO	NO
75	Joseph Haley	YES	YES	NO	NO	NO
76	Michelle Hall	YES	NO	NO	NO	NO
77	Monika Hall and Edmund Davis	YES	YES	YES	YES	NO
78	Paul and Juanita Hatch ¹	YES	YES	NO	NO	NO
79	David Hatfield	YES	YES	NO	YES	NO
80	Darrell and Andrea Hayes	YES	YES	NO	NO	NO
81	John Henderson	YES	NO	NO	NO	NO
82	Rachel Henderson	YES	NO	NO	NO	NO
83	Johnnie and Cherrie Hensley	YES	YES	YES	YES	YES 1/5/06
84	Gerald Hensley	YES	YES	YES	NO	NO
85	Terri Hensley	YES	NO	NO	NO	NO
86	Joe and Kathryn Hernandez	YES	YES	NO	NO	NO
87	Noel Hill	YES	NO	NO	NO	NO
88	Victoria Hill	YES	NO	NO	NO	NO
89	Thomas and Judy Holmes	YES	YES	NO	NO	NO

¹ All mail has been returned.

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
90	Forest and Corine Holy	YES	YES	NO	YES	NO
91	Duane and Crista Hudson	YES	YES	NO	NO	NO
92	Jackie Hudson	YES	YES	YES	YES	YES 2/21/06
93	Melvin and Martha Hudson	YES	YES	NO	NO	NO
94	Robert and Alice Hughes	YES	YES	NO	NO	NO
95	Anthony and Tina Hunter	YES	YES	NO	NO	NO
96	Florence Jackson	YES	NO	NO	NO	NO
97	Floyd and Majorie Jacobs	YES	YES	NO	NO	NO
98	Richard and Shawn Johnson	YES	YES	NO	NO	NO
99	Willie and Johnny Jones	YES	YES	NO	NO	NO
100	Janet Kaelin	YES	NO	NO	NO	NO
101	Deanna Killian	YES	YES	NO	NO	NO
102	Sherry Kirby	YES	NO	NO	NO	NO
103	William and Paula Knapp	YES	YES	NO	YES	NO
104	Judith Lazo and Richard Tillison	YES	YES	NO	NO	NO
105	Vickie Leonard	YES	NO	NO	NO	NO
106	Joseph and Marjorie Lewis	YES	YES	NO	NO	YES 3/1/06
107	Glenn and Marilyn Lewis	YES	YES	NO	NO	NO
108	John and Louise Leyendecker	YES	YES	YES	NO	NO
109	Timothy and Andrea Lockhart	YES	YES	NO	NO	YES
110	Elizabeth Lumpkin	YES	YES	NO	NO	NO
111	Jack Lyle and Donna Brown	YES	YES	NO	NO	NO
112	Robert and Lora Lynch	YES	YES	NO	NO	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
113	Jerry and Tina Manshack	YES	YES	NO	NO	NO
114	John and Chantel Marker	YES	YES	NO	NO	NO
115	Johnny and Linda Martin	YES	YES	NO	NO	NO
116	James Mathes	YES	YES	YES	NO	NO
117	Jeff and Yvonne Mayfield	YES	YES	NO	NO	NO
118	Shane and Pamela Mayfield	YES	YES	NO	NO	NO
119	Bryant McDonald	YES	NO	NO	NO	NO
120	Roxanne McKey	YES	YES	NO	NO	NO
121	James and Sherri Mercer	YES	YES	NO	NO	NO
122	Norman and Erica Mercer	YES	YES	NO	NO	NO
123	Jamie and Aimee Meshell	YES	YES	NO	NO	NO
124	Jason Meshell	YES	NO	NO	NO	NO
125	Bob Meth and Mary Bridges	YES	YES	NO	NO	NO
126	Allen and Renee Miller	YES	YES	NO	NO	NO
127	Elvira Mondlonado	YES	NO	NO	NO	NO
128	Clifton and Linda Morphis	YES	YES	NO	NO	NO
129	Joyce Morris	YES	YES	NO	NO	NO
130	James Mosley	YES	NO	NO	NO	NO
131	Rhonda Mosley	YES	NO	NO	NO	NO
132	Ricky and Sharon Mosley	YES	YES	NO	YES	NO
133	Joseph and Theresa Mouton	YES	YES	NO	NO	NO
134	Frank and Griselda Ortiz	YES	YES	NO	NO	NO
135	Charles Parshall	YES	NO	NO	NO	NO
136	Jennifer Parshall	YES	NO	NO	NO	NO
137	Richard Poirier and Regina Lakey	YES	YES	NO	NO	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
138	Dave and Debra Powell	YES	YES	NO	NO	NO
139	Edward and Linda Rankin	YES	YES	YES	YES	NO
140	Theresa Ray	YES	YES	NO	NO	NO
141	Oscar and Patty Rendon	YES	YES	NO	NO	NO
142	Belinda Renshaw	YES	YES	NO	NO	NO
143	Thomas Renshaw	YES	NO	NO	NO	NO
144	Gary and Darlene Robbins	YES	YES	NO	NO	NO
145	Charles and Marsha Rokhol	YES	YES	YES	YES	YES 2/8/06
146	Sherry Roscom	YES	NO	NO	NO	NO
147	Walter Roscom	YES	NO	NO	NO	NO
148	Natividad and Alicia Ruiz	YES	YES	YES	YES	NO
149	Jesse and Margaret Salazar	YES	YES	NO	NO	NO
150	Steven Saunders	YES	YES	NO	NO	NO
151	John and Margaret Shelly	YES	YES	YES	YES	YES 2/21/06
152	David and Carla Shumate	YES	YES	YES	NO	NO
153	Paul and Rose Silcox	YES	YES	NO	NO	NO
154	Julina Smith	YES	NO	NO	YES	NO
155	M.L. Standley	YES	YES	NO	NO	NO
156	John and Tina Stanley	YES	YES	YES	NO	NO
157	Steven Stewart	YES	NO	NO	NO	NO
158	John Swindall	YES	YES	YES	NO	Letter 3/1/06
159	John Swindle	YES	NO	NO	NO	NO
160	Jeff and Tammy Terrell	YES	YES	NO	NO	NO
161	Wesley and Beverly Thom	YES	YES	YES w/counsel	YES w/counsel	NO
162	Richard Tillson	YES	YES	NO	NO	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
163	Glen Tippet	YES	NO	NO	NO	NO
164	Donna Todriff	YES	NO	NO	NO	NO
165	Sidney and Sandra Toenniges	YES	YES	NO	NO	NO
166	James and Darlene Trapp	YES	YES	NO	NO	NO
167	Kindall and Darlene Trapp	YES	YES	YES	Letter 2/18/06	YES 2/8/06
168	James and Darlene Tuck	YES	YES	NO	NO	NO
169	George Vaughn	YES	NO	NO	NO	NO
170	Misty Vaughn	YES	YES	NO	NO	NO
171	Edward and Angela Watkins	YES	YES	NO	NO	NO
172	Jack and Brandy Webb	YES	YES	NO	NO	NO
173	Joe and Juliana Weems	YES	YES	NO	NO	NO
174	Robert Werner	YES	NO	NO	NO	NO
175	Kenneth and Susan Westbrook	YES	YES	NO	NO	NO
176	C.J. and Denise White	YES	YES	NO	NO	NO
177	William and Jo Ann Whitson	YES	YES	YES	YES	NO
178	Dennis and Debra Wiggins	YES	YES	NO	NO	NO
179	Danny and Belinda Williams	YES	YES	NO	NO	NO
180	Jerdine Williams	YES	YES	NO	NO	NO
181	Stacy and Lisa Williams	YES	YES	NO	NO	NO
182	T.S. and Jennifer Williamson	YES	YES	NO	NO	NO
183	Arthur and Sandra Wilson	YES	YES	NO	NO	Letter 2/23/06
184	Bridget Wilson	YES	YES	NO	NO	NO

	Name	On 3/3/03 Second Amended Complaint	On 12/2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter Received
185	Thomas and Diane Wilson	YES	YES	NO	NO	NO
186	Ronnie Wolf	YES	YES	NO	NO	NO
187	Jim Wolford	YES	NO	NO	NO	NO
188	Jamie Wooten and Cathy Kimerer	YES	YES	NO	NO	NO

The following table separately lists those whose names were not included in the Second Amended Complaint, who were not on the December 2004 active plaintiffs list, but who attended the November 2005 hearing, the February 2006 hearing, or advised the court in writing of an intent to proceed.

	Name	On 12/2004 Active Plaintiff List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter
1	Thomas Akiens	NO	NO	YES	NO
2	Kim Bell	NO	NO	YES	NO
3	Jason and Tiffany Bender	NO	YES	YES	NO
4	Tricia Berry	NO	YES	NO	NO
5	Leah Blankinship	NO	YES	YES	NO
6	Iva Brown	NO	YES	YES	NO
7	Shawn Burnes	NO	NO	YES	NO
9	Dorothy Crowd	NO	NO	YES	NO
10	Daniel Davis	NO	YES	YES	NO
11	Nancy Galynn	NO	YES	NO	NO
12	Bradford Hanson	NO	YES	YES	NO
13	Richard and Lillie Hill	NO	YES	YES	YES 1/6/06
14	Ed Hoffman	NO	NO	YES	NO
15	Ronda Huffman	NO	NO	YES	NO

	Name	On 12/2004 Active Plaintiff List	Attended 11/05 Hearing	Attended 2/17/06 Hearing	Letter
16	Roderick and Wanda Jefferson	NO	NO	YES	NO
17	Melinda Johnson	NO	YES	NO	NO
18	Charles Loveday	NO	NO	YES	NO
19	Claude and Nicole McGuire	NO	YES	NO	NO
20	Michael McLain	NO	NO	YES	NO
21	Karen McNeill	NO	NO	YES	NO
22	Rudolpho and Mildred Mena	NO	NO	YES	NO
23	Catherine Morris	NO	YES	YES	NO
24	Jessie Owens	NO	NO	YES	NO
26	Wendy Ritchie	NO	YES	YES	YES 1/6/06
27	Debbie Starrett	NO	YES	NO	NO
28	Michelle Reyes and Dean Stuhr	NO	YES	YES	NO
29	Melissa and Alex Szuch	NO	YES	NO	NO

The following individuals were not listed on the Second Amended Complaint but were listed on the December 2004 active plaintiffs list and have attended the November 2005 hearing, the February 2006 hearing, or advised the court in writing of an intent to proceed.

	NAME	On December 2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 12/17/06 Hearing	Letter
1	Rosalynn and Marland Carney	YES	YES	YES	NO
2	Robert Remeker	YES	YES	YES	NO
3	Misty Trapp and Tom Herrera	YES	YES	NO	NO

The following individuals were not listed on the Second Amended Complaint, were listed on the December 2004 active plaintiffs list, but did not attend any hearings or send the court a letter advising of an intent to proceed.

	NAME	On December 2004 Active Plaintiffs List	Attended 11/05 Hearing	Attended 12/17/06 Hearing	Letter
1	Ralph Griffith	YES	NO	NO	NO
2	Betty Hughes	YES	NO	NO	NO
3	Maurice and Margie Lavoie	YES	NO	NO	NO

C. Orders

1. *Order Clarifying that Certain Individuals are Plaintiffs in the Case*

The following individuals are party plaintiffs. They were named in the 2003 Second Amended Complaint, included in the December 2004 active plaintiff list, and attended the subsequent hearings or timely explained why they failed to do so. Those individuals do not need to make any further showing that they are proper party plaintiffs. They are:

1. Joseph and Anita Allooh
2. Robert and Filberta Barron²
3. Steven Baxter and Regina Fannell
4. Sheldon and Shirley Bennett
5. Joel Bergkvist and Theresa Bergkvist
6. Shawn and Gidget Bernard
7. Rick Bishop and Claudette Ferraro
8. Kevin and Billie Bobbit
9. William and Priscilla Braddock
10. Tommy Breedlove

² Robert and Filberta Barron were named in the Second Amended Complaint but not on the December 2004 active plaintiffs list. Because they were on the Second Amended Complaint and attended the hearings, they are proper plaintiffs.

11. Bobbie and Rosita Campbell
12. Jacquelyn Chesson
13. Michael and Beth Davidson
14. Clarence and Katrina DeSha
15. Harold and Sandra Dodson
16. John and Regina Doty
17. Everett and Sandra Eaton
18. James Farnkoff and Patricia Jeffcoat
19. Jackie Gatlin
20. Dewey and Vanesa Guillory
21. Monika Hall and Edmund Davis
22. David Hatfield
23. Johnnie and Cherrie Hensley
24. Gerald Hensley
25. Forest and Corine Holy
26. Jackie Hudson
27. William and Paula Knapp
28. Joseph and Marjorie Lewis
29. John and Louise Leyendecker
30. Timothy and Andrea Lockhart
31. James Mathes
32. Ricky and Sharon Mosley
33. Edward and Linda Rankin
34. Charles and Marsha Rokhol
35. Natividad and Alicia Ruiz
36. John and Margaret Shelly
37. David and Carla Shumate
38. Julina Smith
39. John and Tina Stanley
40. John Swindall
41. Wesley and Beverly Thom
42. Kindall and Darlene Trapp
43. William and Jo Ann Whitson
44. Arthur and Sandra Wilson

2. *Order that Certain Individuals are Dismissed from this Case*

The claims of those individuals who were named in the March 2003 Second Amended Complaint, not named on the December 2004 active plaintiffs list, and who have not appeared

at the hearings or notified this court of their intent to proceed with this case as ordered in the November 2, 2005 and January 5, 2006 orders, are **DISMISSED** for failure to prosecute. FED.R.CIV.P. 41(b); *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R. Co.*, 370 U.S. 626 (1962)). The individuals whose claims are dismissed are:

1. Darrell Abshire
2. Kristen Abshire
3. David Ackman
4. Gloria Briock
5. Mike Briock
6. Dorothy Carville
7. Regina Fanelli
8. Markel Fox
9. Jerry Freeman
10. Monica Freeman
11. George and Diane Globus
12. Belinda Gorby
13. Michelle Hall
14. John and Rachel Henderson
15. Terri Hensley
16. Noel Hill
17. Victoria Hill
18. Florence Jackson
19. Janet Kaelin
20. Sherry Kirby
21. Vickie Leonard
22. Bryant McDonald
23. Jason Meshell
24. Elvira Mondlonado
25. James Mosley
26. Rhonda Mosley
27. Charles Parshall
28. Jennifer Parshall
29. Thomas Renshaw
30. Sherry Roscom
31. Walter Roscom

32. Steven Stewart
33. John Swindle
34. Glen Tippet
35. Donna Todriff
36. George Vaughn
37. Robert Werner
38. Jim Wolford

Those individuals named in the March 2003 Second Amended Complaint and on the December 2004 active plaintiffs list, but who have not attended any hearings or filed a letter as ordered by this court in its November 2, 2005 and January 5, 2006 orders, are **DISMISSED** for failure to prosecute. They are:

1. Waldo Avalos
2. Alvin Babcock
3. Lisa Babcock
4. Theresa Bankert
5. Jose and Salena Barrios
6. Sam and Regina Bartley
7. Arthur and Eva Bibbs
8. Judy Blair
9. Charles and Janet Bliss
10. Dicky and Sonya Borden
11. Richard Brandt and Kevin Brandt
12. Donald and Patricia Briggs
13. Hazel Briles
14. Cameron Brown and Linda Winters
15. Geraldine Brown
16. James and Jacqueline Burnett
17. Ronnie and Stephanie Burrows
18. Jake and Cherry Carlock
19. Tanja Carmichael
20. Ron and Rhonda Carson
21. Leo and Ernestine Childress
22. Kenneth D. Clark
23. Wesley and Michelle Collins
24. Mathew and Jill Copeland
25. Eddie and Brandy Cox

26. Jesse and Michelle Crain
27. Danny and Heidi Cromeens
28. James and Roberta Cuplin
29. Loren Dennard and Thelma Metzger
30. Richard and Betty Doyle
31. Chad and Judina Faulkner
32. Greg and Sara Faulkner
33. David and Theresa Ferguson
34. Ron and Elizabeth Ferguson
35. Ronald and Tonya Fitch
36. Scott and Janice Freile
37. Patrick and Katherine Globus
38. William Gorby
39. Jesse Grandios
40. Darren and Tamara Griffis
41. Douglas and Hilda Hagler
42. Joseph Haley
43. Paul and Juanita Hatch
44. Darrell and Andrea Hayes
45. Joe and Kathryn Hernandez
46. Thomas and Judy Holmes
47. Duane and Crista Hudson
48. Melvin and Martha Hudson
49. Robert and Alice Hughes
50. Anthony and Tina Hunter
51. Floyd and Majorie Jacobs
52. Richard and Shawn Johnson
53. Willie and Johnny Jones
54. Deanna Killian
55. Judith Lazo and Richard Tillison
56. Glenn and Marilyn Lewis
57. Elizabeth Lumpkin
58. Jack Lyle and Donna Brown
59. Robert and Lora Lynch
60. Jerry and Tina Manshack
61. John and Chantel Marker
62. Johnny and Linda Martin
63. Jeff and Yvonne Mayfield
64. Shane and Pamela Mayfield
65. Roxanne McKey
66. James and Sherri Mercer

67. Norman and Erica Mercer
68. Jamie and Aimee Meshell
69. Bob Meth and Mary Bridges
70. Allen and Renee Miller
71. Clifton and Linda Morphis
72. Joyce Morris
73. Joseph and Theresa Mouton
74. Frank and Griselda Ortiz
75. Richard Poirier and Regina Lakey
76. Dave and Debra Powell
77. Theresa Ray
78. Oscar and Patty Rendon
79. Belinda Renshaw
80. Gary and Darlene Robbins
81. Jesse and Margaret Salazar
82. Steven Saunders
83. Paul and Rose Silcox
84. M.L. Standley
85. Jeff and Tammy Terrell
86. Richard Tillson
87. Sidney and Sandra Toenniges
88. James and Darlene Trapp
89. James and Darlene Tuck
90. Misty Vaughn
91. Edward and Angela Watkins
92. Jack and Brandy Webb
93. Joe and Juliana Weems
94. Kenneth and Susan Westbrook
95. C.J. and Denise White
96. Dennis and Debra Wiggins
97. Danny and Belinda Williams
98. Jerdine Williams
99. Stacy and Lisa Williams
100. T.S. and Jennifer Williamson
101. Bridget Wilson
102. Thomas and Diane Wilson
103. Ronnie Wolf
104. Jamie Wooten and Cathy Kimerer

Those individuals who were not named in the March 2003 Second Amended

Complaint, were included on the December 2004 active plaintiffs list, but have not attended the hearings or filed a letter of intent to proceed as this court ordered, are **DISMISSED** for failure to prosecute their claims. These individuals are:

1. Ralph Griffith
2. Betty Hughes
3. Maurice and Margie Lavoie

3. *Order that Certain Individuals Make a Showing that They Gave Timely Notice of Their Claims*

Certain individuals were not named in the Second Amended Complaint or the active plaintiffs list, but did appear at the November 2005 hearing, the February 2006 hearing, or sent a letter explaining why they could not attend and that they intended to proceed *pro se*. These individuals were not formally joined to this lawsuit as plaintiffs but their presence at the hearings or letters indicated an intent to be joined. These individuals are:

1. Thomas Akiens
2. Kim Bell
3. Jason and Tiffany Bender
4. Tricia Berry
5. Leah Blankinship
6. Iva Brown
7. Shawn Burnes
8. Dorothy Crowd
9. Daniel Davis
10. Nancy Galynn
11. Bradford Hanson
12. Richard and Lillie Hill
13. Ed Hoffman
14. Ronda Huffman
15. Roderick and Wanda Jefferson
16. Melinda Johnson
17. Charles Loveday
18. Claude and Nicole McGuire

19. Michael McLain
20. Karen McNeill
21. Rudolpho and Mildred Mena
22. Catherine Morris
23. Jessie Owens
24. Wendy Ritchie
25. Debbie Starrett
26. Michelle Reyes and Dean Stuhr
27. Melissa and Alex Szuch

In addition, the following individuals were not named in the March 2003 Second Amended Complaint but were included in the December 2004 active plaintiffs list and have attended subsequent hearings or filed a notice of their intent to proceed. These individuals are:

1. Rosalynn Carney and Marland Carney
2. Robert Remeker
3. Misty Trapp and Tom Herrera

Considering the *pro se* status of these two groups, this court takes their appearances at the hearings and their letters of intent to proceed as motions to have the complaint amended to include them as party plaintiffs.

This case was filed in state court over five years ago. The statutes of limitation for the claims are two years for some claims and four years for others. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 16.003, 16.051 (Vernon 2005) (statute of limitations for both claims is two years and for breach of contract claims four years); *Gibson v. Campbell & Co.*, 624 S.W.2d 728, 732 (Tex. App. - Fort Worth 1981) (a claim for a breach of the implied warranty of habitability is governed by a two- or four-year statute of limitations); *Whatley v. Nat'l Bank of Commerce*, 555 S.W.2d 500 (Tex. App. - Dallas 1977) (a cause of action for negligent

construction is governed by a two-year statute of limitations); *Walker v. Sears, Roebuck & Co.*, 853 F.2d 355 (5th Cir. 1988) (explaining possible statute of limitations for breach of the implied warranty of good workmanship claim as either two or four years).

An amendment adding a new party plaintiff can “relate back” to the earlier pleading so as to be timely filed only in limited circumstances. *Williams v. United States*, 405 F.2d 234, 237 (5th Cir.1968). In *Williams*, for example, the minor plaintiff’s mother had sued on behalf of her son as his next friend and sought to amend the complaint to add herself as a party plaintiff in her own right to assert claims for recovery for loss of services. *Id.* at 235. The Fifth Circuit found that the amended complaint related back to the original filings and made the mother’s claims timely. *Id.* at 239. The court held that “notice is the critical element involved in Rule 15(c) decisions,” and permitted the amendment because the defendant was on notice of, and not materially prejudiced by, the additional claims. *Id.* at 236

Other courts have applied this rationale to permit amendments adding plaintiffs whose claims would otherwise be barred by the statute of limitations. *See, e.g., Raynor Brothers v. American Cyanamid Co.*, 695 F.2d 382, 384-85 (9th Cir.1982); *Tessier v. Moffatt*, 93 F.Supp.2d 729, 736 (E.D. La.1988); *Cunningham v. Quaker Oats Co.*, 107 F.R.D. 66, 71-72 (W.D.N.Y.1985). Most of the cases in which an amendment adding or substituting a plaintiff relates back to be within the time deadline are cases in which the plaintiff was already in the lawsuit in some capacity or there is a direct relationship, such as ownership, between the current plaintiffs and the new or substituted plaintiffs. *See, e.g., Williams*, 405 F.2d at 235 (party in lawsuit in representative capacity allowed to assert her own claims); *Raynor*

Brothers, 695 F.2d at 384–85 (permitted substitution of affiliated partnership for corporate plaintiff); *Tessier*, 93 F. Supp.2d at 736 (amendment adding limited partnership as plaintiff related back to original complaint filed by the partnership’s limited partners); *Cunningham*, 107 F.R.D. at 71-72 (in suit based on child’s choking accident, mother’s claims related back to suit filed by father on behalf of himself and minor child). Those circumstances are not present here. Courts have, however, permitted the addition of plaintiffs who are similarly situated even though they are not directly related to the existing plaintiffs. *See, e.g., Immigrant Assistance Project of Los Angeles County Fed’n of Labor (AFL-CIO)*, 306 F.3d 842, 857 (9th Cir. 2002); *In re: Integrated Res. Real Estate Ltd. P’ships Secs. Litig.*; 815 F. Supp. 620, 642–44 (S.D.N.Y. 1993); *Nielsen v. Prof’l Fin. Mgmt., Ltd.*, 682 F. Supp. 429, 435–36 (D. Minn. 1987); *Andujar v. Rogowski*, 113 F.R.D. 151, 154–58 (S.D.N.Y.1986); *Stoppelman v. Owens*, 580 F. Supp. 944, 946–47 (D.D.C. 1983).

In determining whether a new plaintiff’s claims relate back to the original complaint, courts consider whether: “(1) the new plaintiff’s claim arose out of the same conduct, transaction or occurrence set forth in the original complaint; (2) the new plaintiff shares an identity of interest with the original plaintiff; (3) the defendants have fair notice of the new plaintiff’s claim; and (4) the addition of the new plaintiff causes the defendants prejudice.” *Olech v. The Village of Willowbrook*, 138 F. Supp. 1036, 1044 (N.D. Ill. 2000) (internal citations omitted).

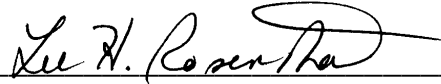
Notice is the “linchpin” of the analysis. *Young v. Lepone*, 305 F.3d 1, 16–17 (1st Cir. 2002) (quoting *Schiavone v. Fortune*, 477 U.S. 21, 31 (1986)); *see* FED. R. CIV. P. 15(c),

Advisory Committee Note to the 1966 Amendment. A finding that notice is sufficient frequently depends on “determining whether the party to be added would be prejudiced by allowing relation back under the circumstances of the particular case.” 6A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 1498 (2d ed. 1990); *see also Young*, 305 F.2d at 17 (“In our view, lack of notice and unfair prejudice go hand in hand.”).

The individuals who were not named in the March 2003 Second Amended Complaint or the December 2004 active plaintiffs list, but who later attended the November 2005 hearing, the February 2006 hearing, or sent a letter explaining their absence and intent to proceed, cannot be party plaintiffs unless they can show that they previously notified the defendants of specific claims about the condition of their houses within the two or four year statute of limitations. This information must be filed with the court and sent to counsel for defendants no later than **April 21, 2006**. Specifically, the information must show: (1) when notice was given to defendants asserting claims based on the condition of the house or subdivision; (2) what was in the notice; (3) how the notice was given to defendants; and (4) to whom the notice was given.

Defendants may respond no later than **May 12, 2006**. This court will issue a subsequent order as to the status of the individuals in this group and order all party plaintiffs to mediation with the defendants.

SIGNED on April 6, 2006, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is positioned above a horizontal line. The signature is fluid and cursive, with a large loop at the end of the last name.

Lee H. Rosenthal
United States District Judge